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bebe stores, inc. and bebe studio, inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

bebe stores, inc., a California corporation; and  
bebe studio, inc., a California corporation,

Plaintiffs,

vs.

forever 21, Inc., a Delaware corporation;  
forever 21 Retail, Inc., a California  
corporation; forever 21 Logistics, LLC, a  
Delaware limited liability company; forever  
XXI, Inc., a California corporation; and For  
Love 21,

Defendants.

Case No. C07 0035 MJJ

**AMENDED COMPLAINT FOR  
COPYRIGHT INFRINGEMENT,  
TORTIOUS INTERFERENCE  
WITH PROSPECTIVE  
ECONOMIC ADVANTAGE,  
MISAPPROPRIATION, LANHAM  
ACT VIOLATIONS, REVERSE  
PALMING OFF, UNFAIR  
COMPETITION, CONSPIRACY,  
TRADEMARK INFRINGEMENT,  
TRADEMARK DILUTION, AND  
BREACH OF CONTRACT**

**DEMAND FOR JURY TRIAL**

Judge: Hon. Martin J. Jenkins

Date:

Time:

Dept.:

Action Filed: 01/04/07

1 Plaintiffs, bebe stores, inc. and bebe studio, inc. (collectively, "bebe"), for its  
 2 amended complaint against forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics,  
 3 LLC, forever XXI, Inc. and For Love 21, alleges as follows:

#### 4 PARTIES

5 1. bebe stores, inc. is a corporation organized and existing under the laws of  
 6 the State of California, with its principal place of business at 400 Valley Drive, Brisbane,  
 7 California 94005.

8 2. bebe studio, inc. is a corporation organized and existing under the laws of  
 9 the State of California, with its principal place of business at 400 Valley Drive, Brisbane,  
 10 California 94005.

11 3. forever 21, Inc. is a Delaware corporation, with its principal place of  
 12 business and executive offices at 2001 South Alameda Street, Los Angeles, California  
 13 90058. forever 21, Inc. is doing business throughout the State of California through its  
 14 retail stores and web sites, with multiple retail store locations in this District.

15 4. forever 21 Retail, Inc. is a California corporation, with its principal place of  
 16 business and executive offices at 2001 South Alameda Street, Los Angeles, California  
 17 90058. forever 21 Retail, Inc. is doing business throughout the State of California  
 18 through its retail stores and web sites, with multiple retail store locations in this District.

19 5. forever 21 Logistics, LLC is a Delaware corporation, with its principal  
 20 place of business and executive offices at 9 East Lookerman Street, Dover, Delaware  
 21 19901. forever 21 Logistics, LLC is doing business throughout the State of California  
 22 and in this District.

23 6. forever XXI, LLC is a California corporation, with its principal place of  
 24 business and executive offices at 2001 South Alameda Street, Los Angeles, California  
 25 90058. forever XXI, LLC is doing business throughout the State of California through its  
 26 retail stores and web sites, with multiple retail store locations in this District.  
 27  
 28

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1           7. Upon information and belief, For Love 21 is either: (a) a California  
2 corporation, with its principal place of business and executive offices at 2001 South  
3 Alameda Street, Los Angeles, California 90058; or (b) a trade name or alias of forever  
4 21, Inc. For Love 21 is doing business throughout the State of California through its  
5 retail stores and web sites, with multiple retail store locations in this District.

6           8. forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics, LLC, forever  
7 XXI, LLC and For Love 21 shall be referred to collectively in this complaint as “forever  
8 21.”

### 9 JURISDICTION AND VENUE

10           9. This action is for: (a) the infringement of United States Copyright  
11 Registrations, pursuant to the laws of the United States, 17 U.S.C. §§ 101 et seq.;  
12 (b) tortious interference with prospective business advantage in violation of California  
13 common law; (c) misappropriation of bebe’s designs in violation of California common  
14 law; (d) violation of Section 43(a) of the Lanham Act; (e) common law reverse palming-off  
15 in violation of California common law; (f) other misappropriation in violation of California  
16 common law; (g) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200 et  
17 seq.; (h) trademark infringement under Sections 32(1) and 34(d) of the Lanham Act; (i)  
18 trademark dilution under Section 43(c) of the Lanham Act; (j) trademark and unfair  
19 competition under California common law; (k) trademark dilution under Calif. Bus. &  
20 Prof. Code § 14330; (l) breach of contract and violation of court order; and (m) civil  
21 conspiracy in violation of California common law. Subject matter jurisdiction for the  
22 claim of copyright and federal trademark infringement is proper in this Court pursuant to  
23 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a). Supplemental jurisdiction for the  
24 remaining claims is proper in this Court pursuant to 28 U.S.C. §§ 1338(b) and 1367  
25 because these claims form part of the same case or controversy as the claim for copyright  
26 infringement.

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10. General and specific personal jurisdiction are proper over forever 21 in this District because of forever 21's (a) pervasive and systematic business activity within the District, (b) sales of the infringing articles within the District, and (c) knowing harm of bebe in this District by knowing placement of infringing articles into the stream of commerce for sale within this District and by engaging in unlawful acts causing harm in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 1400(a).

### **INTRA-DISTRICT ASSIGNMENT**

12. Because this action is an Intellectual Property Action within the meaning of Civil Local Rule 3-2(C), the action is to be assigned on a District-wide basis.

### **FACTUAL BACKGROUND**

13. bebe owns United States Copyright Registration No. VA 1-385-194, which is dated November 28, 2006, covers a print design on fabric, and is entitled "Tulip Field." A copy of Registration No. VA 1-385-194, with deposit depicting the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit A and is incorporated herein by reference.

14. bebe owns United States Copyright Registration No. VA 1-385-195, which is dated November 28, 2006, covers a print design on fabric, and is entitled "Wavy Tulip." A copy of Registration No. VA 1-385-195, with deposit depicting the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit B and is incorporated herein by reference.

15. bebe owns United States Copyright Registration No. VA 1-385-192, which is dated November 28, 2006, covers a print design on fabric, and is entitled "Conna." A copy of Registration No. VA 1-385-192, with deposit depicting the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit C and is incorporated herein by reference.

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1           16. bebe owns United States Copyright Registration No. VA 1-385-197, which  
2 is dated November 28, 2006, covers a design utilized on clothing, and is entitled  
3 "Eyelet." A copy of Registration No. VA 1-385-197, with deposit depicting the claimed  
4 design, is attached to the Complaint (Docket No. 1) as Exhibit D and is incorporated  
5 herein by reference.

6           17. bebe owns United States Copyright Registration No. VA 1-363-651, which  
7 is dated May 25, 2006, covers a design utilized on clothing and is entitled "Sequin Bead  
8 Floral V-Neck Cami." A copy of Registration No. VA 1-363-651, with deposit depicting  
9 the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit E and is  
10 incorporated herein by reference.

11           18. bebe owns United States Copyright Registration No. VA 1-363-650, which  
12 is dated May 25, 2006, covers a design utilized on clothing, and is entitled "Sequin Bead  
13 Floral Front V-Neck Cami." A copy of Registration No. VA 1-363-650, with deposit  
14 depicting the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit F  
15 and is incorporated herein by reference.

16           19. bebe owns United States Copyright Registration No. VA 1-385-196, which  
17 is dated November 28, 2006, covers a print design on fabric, and is entitled "Tilla." A  
18 copy of Registration No. VA 1-385-196, with deposit depicting the claimed design, is  
19 attached to the Complaint (Docket No. 1) as Exhibit G and is incorporated herein by  
20 reference.

21           20. bebe owns United States Copyright Registration No. VA 1-385-193, which  
22 is dated November 28, 2006, covers a print design on fabric, and is entitled "Modern  
23 Indochine." A copy of Registration No. VA 1-385-193, with deposit depicting the  
24 claimed design, is attached to the Complaint (Docket No. 1) as Exhibit H and is  
25 incorporated herein by reference.

26           21. Founded in 1976, bebe designs, develops and produces a distinctive line of  
27 contemporary women's apparel and accessories, which it markets under the "bebe,"  
28

1 “BEBE SPORT,” and “bebe O” brand names. bebe currently operates 264 stores, of  
 2 which 191 are bebe stores, 20 are bebe outlet stores, 52 are BEBE SPORT stores, and 1 is  
 3 a bebe accessories store. These stores are located in the United States, Puerto Rico and  
 4 Canada, with additional licensed stores in Greece, Israel, Thailand and Singapore. In  
 5 addition, bebe operates an on-line store at [www.bebe.com](http://www.bebe.com).

6 22. bebe’s target customers are women between the ages of 21 and 35 who seek  
 7 current fashion trends interpreted to suit their needs. The “bebe look” with that signature  
 8 hint of sensuality, appeals to the hip, sophisticated and body conscious woman who takes  
 9 pride in her appearance. Celebrities are among bebe’s fashionable clientele list. They  
 10 include Alicia Keys, Britney Spears, Destiny’s Child, Ciara, Eva Longoria, Paris Hilton,  
 11 Shakira, Virginia Madsen, Gabrielle Union, Jennifer Lopez and Mischa Barton. bebe  
 12 fashions have also been featured in numerous television shows, including: The O.C., Las  
 13 Vegas, Eve, One Tree Hill, Nip/Tuck, Desperate Housewives, American Idol, CSI  
 14 Miami, Will & Grace, Alias, Charmed, Entertainment Tonight, Access Hollywood, Extra,  
 15 MTV, and VH1.

16 23. Upon information and belief, forever 21 was originally founded as  
 17 “FASHION 21” many years after bebe had already established itself as a fashion  
 18 trendsetter. Eventually, “FASHION 21” changed its name to “forever 21,” and as part of  
 19 its name change, forever 21 even changed the look of its name by abandoning the use of  
 20 all capital letters and copying the hip and sophisticated, all lower case lettering that bebe  
 21 had been using since 1976. As an example, the upper left-hand corner of forever 21’s  
 22 website at [www.forever21.com](http://www.forever21.com) shows forever 21’s prominent use of all lower case letters  
 23 in its name.

24 24. Furthermore, as its name suggests, forever 21 targets the same young  
 25 customers that bebe targets. For example, forever 21’s website states on its “frequently  
 26 asked questions” or “FAQ’s” webpage at <http://www.forever21.com/forever/faq.asp> that  
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1 its target customers are “young [female] shoppers” as well as those women who are  
2 “young at heart.”

3 25. bebe sold the designs identified in paragraphs 13-20 above (“Copyrighted  
4 Designs”) as part of its line of apparel in its retail stores. bebe’s Copyrighted Designs  
5 were part of bebe-branded garments sold in bebe stores throughout the United States,  
6 internationally, and at www.bebe.com.

7 26. Not only did forever 21 copy the hip and sophisticated, all lower case  
8 lettering style of bebe’s name, but in or about 2006, bebe became aware of forever 21’s  
9 sale of garments (“Infringing Garments”) bearing designs (“Knock-Off Designs”) that  
10 were identical or virtually identical to bebe’s Copyrighted Designs on garments sold by  
11 bebe.

12 27. forever 21’s Knock-Off Designs were placed on garments sold by forever  
13 21 and are identical, virtually identical, substantially similar and/or strikingly similar to  
14 bebe’s Copyrighted Designs that are the subject of bebe’s copyright registrations  
15 identified in paragraphs 13-20 above. The following subparagraphs compare bebe’s  
16 Copyrighted Designs on its garments to forever 21’s Knock-Off Designs on the  
17 Infringing Garments:

18 a. As shown in Exhibit I to the Complaint (Docket No. 1) and  
19 incorporated herein by reference, bebe sells a Smocked Tie Strap Dress with the  
20 copyrighted and registered “Tulip Field” design, as identified previously in paragraph 13  
21 above and in Exhibit A, and forever 21 sells a “DRESS/SHRT  
22 LNGTH/DRS/SLVLS/N/A/” with an identical, virtually identical, substantially similar  
23 and/or strikingly similar design.

24 b. As shown in Exhibit J to the Complaint (Docket No. 1) and  
25 incorporated herein by reference, bebe sells a Kimono Dress with the copyrighted and  
26 registered “Wavy Tulip” design, as identified previously in paragraph 14 above and in  
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1 Exhibit B, and forever 21 sells a "SHRT LNGHT DRS/3/BLACK/WHITE" with an  
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 c. As shown in Exhibit K to the Complaint (Docket No. 1) and  
4 incorporated herein by reference, bebe sells a Cap Sleeve Amanda with the copyrighted  
5 and registered "Conna" design, as identified previously in paragraph 15 above and in  
6 Exhibit C, and forever 21 sells a "WOVEN TOP/WOVEN SHIRT/SSLV/N/A" with an  
7 identical, virtually identical, substantially similar and/or strikingly similar design.

8 d. As shown in Exhibit L to the Complaint (Docket No. 1) and  
9 incorporated herein by reference, bebe sells an Embroidered Eyelet Top With Belt with  
10 the copyrighted "Eyelet" design, as identified previously in paragraph 16 above and in  
11 Exhibit D, and forever 21 sells a "WOVEN TOP/SLVLS/RED/TAUPE" with an  
12 identical, virtually identical, substantially similar and/or strikingly similar design.

13 e. As shown in Exhibit M to the Complaint (Docket No. 1) and  
14 incorporated herein by reference, bebe sells a V Detailed Beaded Cami with the  
15 copyrighted "Sequin Floral Front V Neck Cami" design, as identified previously in  
16 paragraph 17 above and in Exhibit E, and forever 21 sells a "WOVEN TOP/WOVEN  
17 TOP/SPAGHETTI/N/A" with an identical, virtually identical, substantially similar and/or  
18 strikingly similar design.

19 f. As shown in Exhibit N to the Complaint (Docket No. 1) and  
20 incorporated herein by reference, bebe sells a V Neck Beaded Cami Tank with the  
21 copyrighted "Sequin Bead Floral V Neck Cami" design, as identified previously in  
22 paragraph 18 above and in Exhibit F, and forever 21 sells a "WOVEN TOP/WOVEN  
23 TOP/SPAGHETTI/N/A" with an identical, virtually identical, substantially similar and/or  
24 strikingly similar design.

25 g. As shown in Exhibit O to the Complaint (Docket No. 1) and  
26 incorporated herein by reference, bebe sells a Print Kimono With Solid Border with the  
27 copyrighted "Tilla" design, as identified previously in paragraph 19 above and in Exhibit  
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1 G, and forever 21 sells a "WOVEN TOP/HALTER/TAUPE/BLACK/RED" with an  
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 h. As shown in Exhibit P to the Complaint (Docket No. 1) and  
4 incorporated herein by reference, bebe sells a Print Kimono With Solid Border with the  
5 copyrighted and registered "Modern Indochine" design, as identified previously in  
6 paragraph 20 above and in Exhibit H, and forever 21 sells a "WOVEN  
7 TOP/CAPSLV/BLACK./RED/ORANGE" with an identical, virtually identical,  
8 substantially similar and/or strikingly similar design.

9 28. bebe also sold other garments having other custom designs ("Custom  
10 Designs") that were similarly part of bebe's line of apparel in its retail stores throughout  
11 the United States. bebe's Custom Designs were part of bebe-branded garments sold in  
12 bebe stores throughout the United States, internationally, and at www.bebe.com.

13 29. Also in or about 2006, bebe became aware of forever 21's sale of additional  
14 Infringing Garments bearing other Knock-Off Designs that were identical or virtually  
15 identical to bebe's Custom Designs on garments sold by bebe.

16 30. The Knock-Off Designs of the Infringing Garments sold by forever 21 were  
17 placed on garments and are identical, virtually identical, substantially similar and/or  
18 strikingly similar to bebe's Custom Designs. The following subparagraphs compare  
19 bebe's Custom Designs to forever 21's Knock-Off Designs on the Infringing Garments:

20 a. As shown in Exhibit Q to the Complaint (Docket No. 1) and  
21 incorporated herein by reference, bebe sells a Printed Full Tie Skirt with the custom  
22 "Vivienne" design, and forever 21 sells a "KNEE LNIGHT  
23 SKIRT/BLACK/WHITE/AQUA" with an identical, virtually identical, substantially  
24 similar and/or strikingly similar design.

25 b. As shown in Exhibit R to the Complaint (Docket No. 1) and  
26 incorporated herein by reference, bebe sells a Panel Cut Out Zebra Cami with the custom  
27 "Panel Cut Out Zebra" design, and forever 21 sells a "WOVEN  
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1 TOP/SPAGHE/BLACK/WHITE” with an identical, virtually identical, substantially  
2 similar and/or strikingly similar design.

3 c. As shown in Exhibit S to the Complaint (Docket No. 1) and  
4 incorporated herein by reference, bebe sells a Smocked Tie Strap Dress with the custom  
5 “Coba” design, and forever 21 sells a “DRESS KNEE LENGH/DRS/SLVLS/N/A” with  
6 an identical, virtually identical, substantially similar and/or strikingly similar design.

7 d. As shown in Exhibit T to the Complaint (Docket No. 1) and  
8 incorporated herein by reference, bebe sells a Asprin Polka Dot Dress with the custom  
9 “Polka Dot / Solid Style” design, and forever 21 sells a “DRESS KNEE  
10 LENGH/DRS/SSLVS/N/A” with an identical, virtually identical, substantially similar  
11 and/or strikingly similar design.

12 e. As shown in Exhibit U to the Complaint (Docket No. 1) and  
13 incorporated herein by reference, bebe sells a Lace Sleeve Pin Tuck Bib Shirt with the  
14 custom “Bib” design, and forever 21 sells a “WOVEN TOP/CAPSLV” with an identical,  
15 virtually identical, substantially similar and/or strikingly similar design.

16 f. As shown in Exhibit V to the Complaint (Docket No. 1) and  
17 incorporated herein by reference, bebe sells a Stripe Shirt Vest Short Sleeve with the  
18 custom “Stripe / Solid” design, and forever 21 sells a WOVEN TOP/WOVEN  
19 TOP/3QSLV/N/A with an identical, virtually identical, substantially similar and/or  
20 strikingly similar design.

21 g. As shown in Exhibit W to the Complaint (Docket No. 1) and  
22 incorporated herein by reference, bebe sells a Ruched Bustier with Bows with the custom  
23 “Ruched Bustier” design, and forever 21 sells a “WOVEN TOP/WOVEN  
24 TOP/SLVLS/N/A” with an identical, virtually identical, substantially similar and/or  
25 strikingly similar design.

26 h. As shown in Exhibit X to the Complaint (Docket No. 1) and  
27 incorporated herein by reference, bebe sells a Smocked Rose Belt with the custom  
28

1 “Rose” design, and forever 21 sells a “BELT Black/Silver” with an identical, virtually  
2 identical, substantially similar and/or strikingly similar design.

3 i. As shown in Exhibit Y to the Complaint (Docket No. 1) and  
4 incorporated herein by reference, bebe sells a Crossover Cami with Panels with the  
5 custom “Panel” design, and forever 21 sells a “WOVEN TOP/WOVEN  
6 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or  
7 strikingly similar design.

8 j. As shown in Exhibit Z to the Complaint (Docket No. 1) and  
9 incorporated herein by reference, bebe sells a Matte/Shiny V-Neck Blouson with the  
10 custom “Matte/Shiny V-Neck” design, and forever 21 sells a “WOVEN TOP/WOVEN  
11 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or  
12 strikingly similar design.

13 k. As shown in Exhibit AA to the Complaint (Docket No. 1) and  
14 incorporated herein by reference, bebe sells a Twist Neck & Strap Top with the custom  
15 “Twist Neck & Strap” design, and forever 21 sells a “WOVENTOP/SPAGHE/AQUA”  
16 with an identical, virtually identical, substantially similar and/or strikingly similar design.

17 l. As shown in Exhibit BB to the Complaint (Docket No. 1) and  
18 incorporated herein by reference, bebe sells a Cowl Neck Ruched Body Halter with the  
19 custom “Cowl Neck Ruched Body” design, and forever 21 sells a KNIT  
20 TOP/HALTER/CREAM with an identical, virtually identical, substantially similar and/or  
21 strikingly similar design.

22 m. As shown in Exhibit CC to the Complaint (Docket No. 1) and  
23 incorporated herein by reference, bebe sells a V-Neck Halter Top with Band with the  
24 custom “V-Neck and Band” design, and forever 21 sells a “WOVEN  
25 TOP/HALTER/BLACK/PINK” with an identical, virtually identical, substantially similar  
26 and/or strikingly similar design.

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n. As shown in Exhibit DD to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Dip Dye Cami with the custom “Dip Dye” design, and forever 21 sells a “WOVENTOP/WOVEN TOP/SPAGHETTI/N/A/CREAM/PINK/HOT PINK” with an identical, virtually identical, substantially similar and/or strikingly similar design.

o. As shown in Exhibit EE to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Raw Trim X Front Halter with the custom “Raw Trim X” design, and forever 21 sells a “WOVEN TOP/WOVEN TOP/HALTER/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

p. As shown in Exhibit FF to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Fold Up Cuff 2Fer with the custom “Woven Basket” design, and forever 21 sells a “WOVEN TOP/3QSLV/BLACK/CREAM” with an identical, virtually identical, substantially similar and/or strikingly similar design.

q. As shown in Exhibit GG to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Cami with Charmeuse with the custom “Charmeuse” design, and forever 21 sells a “SWEATER/SWTR TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

r. As shown in Exhibit HH to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Knit Tank with Bow with the custom “Knit and Bow” design, and forever 21 sells a “KNIT TOP/KNI TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

s. As shown in Exhibit II to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Print Tube Top with the custom “Sunflower



1 Peck” design, and forever 21 sells a “KNIT TOP/TUBE/BLACK/CRÈME” with an  
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 t. As shown in Exhibit JJ to the Complaint (Docket No. 1) and  
4 incorporated herein by reference, bebe sells a red Print Kimono With Print Border with  
5 the custom “Modern Indochine” design and the custom “Tilla” design, and forever 21  
6 sells a “WOVEN TOP/CAPSLV/BLACK/RED/ORANGE” with an identical, virtually  
7 identical, substantially similar and/or strikingly similar design.

8 31. To date, bebe has discovered these Infringing Garments, and there may well  
9 be others. Given the distinctiveness of bebe’s designs and that forever 21 seeks to  
10 compete in bebe’s market niche by providing fashionable clothes for younger women, the  
11 same demographic in which bebe has been extremely successful, it is evident that forever  
12 21 has willfully copied the bebe Copyrighted Designs as well as the bebe Custom  
13 Designs.

14 32. forever 21 obtained some or all of the Knock-Off Designs and Infringing  
15 Garments by directly and systematically soliciting bebe’s Custom Designs and  
16 Copyrighted Designs from those manufacturing bebe’s garments.

17 33. Upon information and belief, forever 21 regularly puts on a “sample fair” at  
18 various locations throughout the world.

19 34. In connection with these “sample fairs,” forever 21 sends invitations to  
20 numerous manufacturers who produce garments for designer labels, including bebe.

21 35. These invitations request that manufacturers bring samples of garments  
22 produced under specific labels, including bebe.

23 36. These invitations further request that the manufacturers “present ‘any  
24 available’ stock for immediate order.”

25 37. In 1976, bebe began business in San Francisco by distributing distinctive  
26 contemporary women’s fashion apparel and accessories under its “bebe” mark. bebe has  
27 spent tens of millions of dollars conducting advertising campaigns to develop brand  
28

1 recognition for its “bebe” mark by placing advertisements in fashion magazines and on  
2 billboards, using celebrity endorsements or entertainment media promotions, and using  
3 in-store advertisements, among other things. bebe’s advertisements prominently feature  
4 the unique and distinctive “bebe” mark. bebe has also gained substantial recognition by  
5 being the subject of fashion reviews and articles written in many publications. bebe’s  
6 increased consumer brand awareness of the “bebe” mark has led to increased consumer  
7 product demand.

8 38. As a result of bebe’s long use, successful sales, and substantial advertising  
9 of the “bebe” mark, the “bebe” mark has become a famous and well-recognized source  
10 indicator throughout the United States and the world for bebe’s products and services.

11 39. bebe is the owner of the “bebe” trademark that is the subject of United  
12 States Trademark Registration No. 1,652,462, which issued on July 30, 1991 for men’s  
13 and women’s apparel, namely, shirts, blouses, pants, jackets, coats, sweaters, suits and  
14 dresses, and accessories, namely, belts, scarves and hats in international class 25, and  
15 which claimed a date of first use at least as early as July 1976 and a date of first use in  
16 interstate commerce at least as early as October 1976.

17 40. bebe is the owner of the “bebe SAN FRANCISCO” trademark that is the  
18 subject of United States Trademark Registration No. 1,950,771, which issued on January  
19 23, 1996 for men’s and women’s apparel, namely, shirts, blouses, pants, jackets, coats,  
20 sweaters, suits and dresses; and accessories, namely, belts, scarves and hats in  
21 international class 25, and which claimed a date of first use at least as early as November  
22 1994 and a date of first use in interstate commerce at least as early as November 1994.

23 41. bebe is the owner of the “bebe” service mark that is the subject of United  
24 States Service Mark Registration No. 2,038,435, which issued on February 18, 1997 for  
25 retail store services for women’s clothing and accessories in international class 42, and  
26 which claimed a date of first use at least as early as July 1976 and a date of first use in  
27 interstate commerce at least as early as October 1976.

42. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,289,914, which issued on November 2, 1999 for eyewear in international class 9, and which claimed a date of first use at least as early as December 1996 and a date of first use in interstate commerce at least as early as December 1996. .

43. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,328,170, which issued on March 14, 2000 for jewelry, namely, earrings, rings, necklaces, pendants and bracelets in international class 14, and which claimed a date of first use at least as early as July 1976 and a date of first use in interstate commerce at least as early as October 1976.

44. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,496,624, which issued on October 9, 2001 for footwear, namely, loafers, espadrilles, sandals, thongs, mules, and pumps in international class 25, and which claimed a date of first use at least as early as April 1999 and a date of first use in interstate commerce at least as early as June 1999.

45. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,494,865, which issued on October 2, 2001 for clocks, watches and wristwatches in international class 14, and which claimed a date of first use at least as early as May 1997 and a date of first use in interstate commerce at least as early as May 1997.

46. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,520,418, which issued on December 18, 2001 for perfume, cologne, and toilet water in international class 3, and which claimed a date of first use at least as early as June 2001 and a date of first use in interstate commerce at least as early as June 2001.

47. bebe is the owner of the “bebe” trademark that is the subject of United States Trademark Registration No. 2,660,869, which issued on December 10, 2002 for



1 shampoo, body wash, shower gel, bath oil, non-medicated bath salts, dusting power, skin  
2 moisturizer, make-up for eyes, lips, and cheeks, and make-up remover in international  
3 class 3, and which claimed a date of first use at least as early as June 2001 and a date of  
4 first use in interstate commerce at least as early as June 2001.

5 48. bebe is the owner of the “bebe” trademark that is the subject of United  
6 States Trademark Registration No. 2,690,952, which issued on February 25, 2003 for  
7 bras, panties, pajamas, slips, robes, pantyhose, and camisoles in international class 25,  
8 and which claimed a date of first use at least as early as September 1998 and a date of  
9 first use in interstate commerce at least as early as September 1998.

10 49. bebe is the owner of the “bebe.com” service mark that is the subject of  
11 United States Service Mark Registration No. 2,709,481, which issued on April 22, 2003  
12 for on-line retail store services featuring women’s clothing, shoes, fragrances and  
13 accessories in international class 35, and which claimed a date of first use at least as early  
14 as September 1998 and a date of first use in interstate commerce at least as early as  
15 September 1998.

16 50. bebe is the owner of the “bebesport.com” service mark that is the subject of  
17 United States Service Mark Registration No. 2,870,497, which issued on August 3, 2004  
18 for on-line retail store services feature clothing in international class 35, and which  
19 claimed a date of first use at least as early as February 2004 and a date of first use in  
20 interstate commerce at least as early as February 2004.

21 51. bebe is the owner of the “BEBE SPORT” trademark that is the subject of  
22 United States Trade Mark Registration No. 2,906,864, which issued on November 30,  
23 2004, (a) for on-line retail store services featuring women’s clothing and accessories, and  
24 retail store services featuring clothing and accessories in international class 35, and  
25 claiming a date of first use at least as early as November 2002 and a date of first use in  
26 interstate commerce at least as early as November 2002, (b) for articles of clothing for  
27 women, namely, shorts, blouses, pants, jackets, coats, sweaters, suits, dresses, slacks and  
28



1 trousers, accessories, namely, belts, scarves and hats, and footwear, namely, loafers,  
 2 espadrilles, sandals, thongs, mules and pumps in international class 25, and claiming a  
 3 date of first use at least as early as August 2002 and a date of first use in interstate  
 4 commerce at least as early as August 2002, and (c) for articles made of leather or  
 5 imitation leather, namely, handbags, purses, clutch bags, shoulder bags, tote bags,  
 6 backpacks and luggage of all types, and claiming a date of first use at least as early as  
 7 August 2002 and a date of first use in interstate commerce at least as early as August  
 8 2002.

9 52. bebe is the owner of the “bebe” trademark that is the subject of United  
 10 States Trademark Application Serial No. 78/935,123, which was filed on July 21, 2006  
 11 for purses, clutch bags, shoulder bags, tote bags and backpacks in international class 18,  
 12 and which claimed a date of first use at least as early as June 1994 and a date of first use  
 13 in interstate commerce at least as early as June 1994.

14 53. In or about 2007, bebe became aware of forever 21’s sales of sunglasses  
 15 having the “bebe” mark on them. Upon information and belief, forever 21 has sold and  
 16 continues to sell other products having the “bebe” mark on them, and forever 21 has used  
 17 and continues to use the “bebe” mark in its business.

18 54. No legitimate reason exists for forever 21’s conduct, such as its  
 19 unauthorized use of the “bebe” mark. Such conduct is not required for forever 21 to  
 20 compete effectively or efficiently in the clothing merchandise market. Upon information  
 21 and belief, forever 21 willfully engages in such conduct with full knowledge of, and  
 22 reckless disregard for, bebe’s rights. Upon information and belief, forever 21 also  
 23 willfully engages in such conduct with the intention of deceiving the public.

24 55. Upon information and belief, Fashion 21, Inc. was a California corporation  
 25 with its principal place of business in Los Angeles, California, and Fashion 21  
 26 Merchandising Corp. was a California corporation with its principal place of business in  
 27 Los Angeles, California. Upon information and belief, Fashion 21, Inc. and Fashion 21  
 28

Merchandising Corp. are predecessors to at least one of Defendants forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics, LLC, forever XXI, LLC and For Love 21.

56. In 2001, bebe stores, inc. sued Fashion 21, Inc. and Fashion 21 Merchandising Corp. in United States District Court for the Northern District of California, San Francisco Division, for infringement of the trademarks identified in paragraphs 39-45 above ("the Previous Lawsuit"). The case number for the Previous Lawsuit was C-01-1451 (MJJ).

57. In 2002, bebe stores, inc., Fashion 21, Inc. and Fashion 21 Merchandising Corp. settled the Previous Lawsuit by entering into a settlement agreement and stipulating and consenting to a Final Consent Judgment and Permanent Injunction against Fashion 21, Inc. and Fashion 21 Merchandising Corp.

58. Later, on February 8, 2002, United States District Court for the Northern District of California entered the Final Consent Judgment and Permanent Injunction against Fashion 21, Inc. and Fashion 21 Merchandising Corp. in the Previous Lawsuit.

59. forever 21's use of the "bebe" mark breaches the settlement agreement between bebe stores, inc., Fashion 21, Inc. and Fashion 21 Merchandising Corp. for the Previous Lawsuit and also violates the Final Consent Judgment and Permanent Injunction in the Previous Lawsuit.

### **FIRST CLAIM FOR RELIEF**

#### **(Copyright Infringement Against forever 21)**

60. The preceding paragraphs are incorporated by this reference.

61. Upon information and belief, some or all of the Infringing Garments constitute garments actually designed by and manufactured for bebe.

62. forever 21 has infringed bebe's registered copyrights identified in paragraphs 13-20 above, through forever 21's reproduction, preparation of derivative works, and/or distribution of the virtually identical Knock-Off Designs on at least the

1 Infringing Garments identified in paragraph 27 and sold throughout forever 21's stores,  
2 including those stores found in this District.

3 63. As demonstrated by forever 21's desire to compete in bebe's market niche,  
4 forever 21's infringement of bebe's registered copyrights is willful. In creating inventory  
5 for its Infringing Garments, forever 21 had access to and even actively solicited samples  
6 of the bebe lines of apparel. forever 21's Knock-Off Designs are identical or virtually  
7 identical to bebe's registered copyrights, and forever 21's use of identical designs for  
8 identical purposes on competing goods demonstrates its willful infringement.

9 64. bebe has been damaged by the willful infringement of forever 21 in an  
10 amount to be determined at trial.

11 65. forever 21 has been unjustly enriched by the receipt of profits on its sale of  
12 Infringing Garments in an amount to be determined at trial.

13 66. As a direct result of the infringement by forever 21, bebe has suffered, and  
14 will continue to suffer, irreparable harm, including, but not limited to, harm to its  
15 business reputation and goodwill.

16 67. forever 21 is presently engaged in the sale of Infringing Garments, and  
17 unless immediately restrained and enjoined, will continue to do so. bebe's remedy at law  
18 is not by itself adequate to compensate them for the harm inflicted and threatened by  
19 forever 21.

## 20 **SECOND CLAIM FOR RELIEF**

### 21 **(Tortious Interference With Prospective Business Advantage Against Forever21)**

22 68. The preceding paragraphs are incorporated by this reference.

23 69. California common law defines the elements of tortious interference with  
24 prospective economic advantage as: (1) an economic relationship between a first party  
25 and its customers, with the probability of future economic benefit to the first party; (2) a  
26 second party's knowledge of the economic relationship; (3) the second party's intentional  
27  
28



1 act(s) to disrupt the economic relationship; (4) actual disruptions of the relationship; and  
 2 (5) economic harm to the first party proximately caused by the second party's acts.

3 70. bebe has an economic relationship with its customers, including but not  
 4 limited to its fashionable and famous clientele, and bebe reasonably expects future  
 5 economic benefit from such customers.

6 71. forever 21 has knowledge of bebe's economic relationships.

7 72. forever 21 competes in the market to provide fashionable clothes for younger  
 8 women and increase its market share and competitiveness by intentionally, illegally,  
 9 maliciously, fraudulently, and wantonly knocking off bebe's original creative designs,  
 10 including but not limited to its Custom Designs.

11 73. forever 21's acts have disrupted bebe's economic relationships.

12 74. forever 21's acts have proximately caused bebe's economic harm.

13 75. As a direct result of forever 21's acts, bebe has suffered, and will continue  
 14 to suffer, irreparable harm. Because of forever 21's unlawful, unfair, intentional,  
 15 malicious, wonton and fraudulent business acts and practices, once customers learn  
 16 forever 21 has a practice of pirating and reproducing bebe's garments, they will refrain  
 17 from purchasing bebe's more expensive garments. In some instances, bebe's customers  
 18 may even wait to purchase the knocked-off, less expensive garments sold by forever 21  
 19 with virtually identical designs.

20 76. As a direct result of forever 21's acts, bebe has suffered, and will continue  
 21 to suffer, irreparable harm, including, but not limited to, harm to its business reputation  
 22 and goodwill. Because of forever 21's unlawful, unfair, intentional, malicious, wonton  
 23 and fraudulent business acts and practices, once customers learn that forever 21 and bebe  
 24 produce apparently identical garments, bebe's reputation and goodwill will be irreparably  
 25 harmed.

26 77. forever 21 has been unjustly enriched by its unfair, unlawful, intentional,  
 27 malicious, wonton, fraudulent and deceptive practices in a sum to be determined at trial.  
 28

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78. bebe has been damaged by the unfair, unlawful, intentional, malicious, wonton, fraudulent and deceptive practices of forever 21 in a sum to be determined at trial.

### **THIRD CLAIM FOR RELIEF**

**(Misappropriation of bebe's Designs Against forever 21)**

80. The preceding paragraphs are incorporated by this reference.

81. At great cost, expense, and effort, bebe generates and collects fashionable and cutting edge garment designs, including, without limitation, the Copyrighted Designs and Custom Designs.

82. The value of bebe's Custom Designs and Copyrighted Designs are time sensitive in that bebe prides itself on producing the most fashionable and up-to-date designs. bebe's clientele expects bebe's garments to represent the latest fashion trends and designs. Once customers learn that forever 21 has pirated and reproduced bebe's garments, customers refrain from purchasing bebe's garments.

83. forever 21 has engaged in the pattern and practice of directly and willfully contacting those that manufacture bebe's garments, including, without limitation, the Custom Designs and Copyrighted Designs.

84. forever 21's use of bebe's Copyrighted Designs and Custom Designs not only constitutes free riding on bebe's costly and time-consuming efforts to generate the Custom Designs and Copyrighted Designs, but also constitutes misappropriation of bebe's costly and time-consuming efforts to locate, educate, prepare and engage appropriate materials, sources and manufacturers to produce bebe's Copyrighted Designs and Custom Designs.

85. forever 21's use of the Copyrighted Designs and Custom Designs and/or bebe's identified materials, sources and manufacturers is in direct competition with bebe's business.

86. The ability of forever 21 and others to free ride on the time, energy and effort bebe has expended in creating, developing, and collecting its hip, sophisticated, and fashionable designs reduces the incentive that bebe and others have to collect and produce the most up-to-date fashions.

87. As a result of forever 21's free riding, bebe has been damaged under California common law in an amount to be proven at trial.

88. forever 21 is presently engaged in misappropriating bebe's Copyrighted Designs and Custom Designs, and unless immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Violation of Section 43(a) of the Lanham Act Against forever 21)**

89. The preceding paragraphs are incorporated by this reference.

90. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) prohibits forever 21 from misleading the public by putting forth bebe's work as its own.

91. forever 21 has engaged in the pattern and practice of directly contacting those that manufacture bebe's garments, including, without limitation, the Custom Designs and Copyrighted Designs.

92. Through its solicitation, forever 21 has obtained garments reflecting the Copyrighted Designs and Custom Designs.

93. forever 21 has improperly marketed as its own these bebe garments reflecting the Custom Designs and Copyrighted Designs.

94. forever 21 has sold under its forever 21 name garments that were actually designed by and manufactured for bebe.

1 95. forever 21's willful actions have misled the public by putting forth bebe's  
2 designs and work as its own.

3 96. As a result of forever 21's wrongful conduct, bebe has been harmed in an  
4 amount to be proven at trial.

5 97. Additionally, forever 21's use in commerce of the counterfeit "bebe" mark,  
6 which is a copy or colorable imitation of the "bebe" mark, constitutes a misappropriation  
7 of bebe's mark and a false designation of origin to the public of the character and quality  
8 of forever 21's goods. Such use is also likely to cause confusion, mistake, or deception  
9 as to: (a) the affiliation, connection, or association of forever 21 with bebe, (b) the origin,  
10 sponsorship, or approval of forever 21's goods by bebe, and (c) source of forever 21's  
11 goods, all in violation of 15 U.S.C. § 1125(a) and to the great damage of bebe and the  
12 public.

13 98. forever 21's willful and unlawful use and misappropriation of the "bebe"  
14 mark has and will continue to injure bebe's business, goodwill, reputation, and profits.

15 99. forever 21 is presently engaged in violating Section 43(a) of the Lanham  
16 Act, and unless immediately restrained and enjoined, will continue to do so. bebe's  
17 remedy at law is not by itself adequate to compensate them for the harm inflicted and  
18 threatened by forever 21.

### 19 **FIFTH CLAIM FOR RELIEF**

#### 20 **(Common Law Reverse Palming-Off Against forever 21)**

21 100. The preceding paragraphs are incorporated by this reference.

22 101. California common law prohibits forever 21 from misleading the public by  
23 putting forth bebe's work as its own.

24 102. forever 21 has engaged in the pattern and practice of directly contacting  
25 those that manufacture bebe's garments, including, without limitation, the Custom  
26 Designs and Copyrighted Designs.



1 103. Through its solicitation, forever 21 has obtained garments reflecting the  
2 Copyrighted Designs and Custom Designs.

3 104. forever 21 has improperly marketed as its own these bebe garments  
4 reflecting the Custom Designs and Copyrighted Designs.

5 105. forever 21 has sold under its forever 21 name garments that were actually  
6 designed by and manufactured for bebe.

7 106. forever 21's actions have misled the public by putting forth bebe's designs  
8 and work as its own.

9 107. As a result of forever 21's willful and wrongful conduct, bebe has been  
10 damaged in an amount to be proven at trial.

11 108. forever 21 is presently engaged in reverse palming-off, and unless  
12 immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not  
13 by itself adequate to compensate them for the harm inflicted and threatened by forever  
14 21.

### 15 **SIXTH CLAIM FOR RELIEF**

#### 16 **(Common Law Misappropriation Against forever 21)**

17 109. The preceding paragraphs are incorporated by this reference.

18 110. bebe has invested substantial time and money in the development of a pool  
19 of manufacturers with the capacity and ability to manufacture its garments, including the  
20 Custom Design and Copyrighted Designs.

21 111. forever 21 has willfully misappropriated bebe's pool of qualified  
22 manufacturers at little or no cost by merely directly soliciting manufacturers currently  
23 producing garments reflecting the Custom Designs and Copyrighted Designs.

24 112. bebe has been injured by forever 21's conduct in that bebe is at a market  
25 disadvantage, having expended significant time and resources to identify manufacturers  
26 with the capacity and expertise to properly produce bebe's Custom Designs and  
27  
28

Copyrighted Designs. forever 21 does not have a similar burden and is merely utilizing bebe's manufacturers to produce forever 21's Knock-Off Designs.

113. Additionally, bebe has used its distinctive "bebe" mark in connection with clothing and personal accessories for a significant period of time, and in view of such use, the "bebe" mark has become uniquely associated with bebe and identifies bebe as the source of those goods. Bebe is the owner of the valuable "bebe" mark and the goodwill associated therewith, which were created from the investment of substantial time, money, and effort.

114. forever 21 has willfully misappropriated the "bebe" mark and the associated goodwill for its own use, without bebe's permission and without compensating bebe. Forever 21 has reaped the benefits of bebe's creativity and efforts without the same cost that bebe incurred.

115. As a result of forever 21's wrongful conduct, bebe has been damaged under California common law in an amount to be proven at trial.

116. forever 21 is presently engaged in misappropriation, and unless immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Unfair Competition Pursuant to Cal. Bus. & Prof. Code §§ 17200 et seq.**

#### **Against forever 21)**

117. The preceding paragraphs are incorporated by this reference.

118. The California Unfair Business Practices Act, Bus. & Prof. Code §§ 17200 et seq. ("Section 17200"), defines unfair competition as any "unlawful, unfair or fraudulent business act or practice." Section 17200 provides for injunctive relief and restitution to persons harmed by unfair competition.

119. forever 21 competes in the market to provide fashionable clothes for younger women and increase its market share and competitiveness by engaging in the wrongful conduct described herein.

120. forever 21 has engaged, and will continue to engage, in unfair competition as defined by Section 17200. The acts and practices as alleged herein violate Section 17200.

121. As a direct result of the willful unfair competition by forever 21, bebe has suffered, and will continue to suffer, irreparable harm, including, but not limited to, harm to its business reputation and goodwill. Because of forever 21's unlawful, unfair, intentional, and fraudulent business acts and practices, bebe has lost customers, and bebe's reputation and goodwill have been and will be irreparably harmed.

122. forever 21 has been unjustly enriched by its unfair, unlawful, intentional, and deceptive practices in a sum to be determined at trial.

123. bebe has been damaged by the unfair, unlawful, intentional, and deceptive practices of forever 21 in a sum to be determined at trial.

124. bebe's remedy at law is not, by itself, adequate to compensate them for the harm inflicted and threatened by forever 21.

125. forever 21 is presently engaged in unfair competition under Section 17200, and unless immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

### **EIGHTH CLAIM FOR RELIEF**

#### **(Trademark Infringement under Sections 32(1) and 34(d) of the Lanham Act)**

126. The preceding paragraphs are incorporated by this reference.

127. forever 21's use of the "bebe" marks has injured bebe and, if permitted to continue, will irreparably injure bebe, the "bebe" mark, the goodwill associated with bebe and the "bebe" mark, and bebe's reputation for high-quality products.



128. forever 21's unauthorized use of a reproduction, counterfeit, copy, or colorable imitation of the "bebe" mark is likely to cause confusion, cause mistake, or deceive.

129. forever 21's use of the "bebe" mark is unlawful and willful.

130. forever 21 is presently engaged in trademark infringement under 15 U.S.C. § 1114(1), and unless immediately restrained and enjoined under 15 U.S.C. § 1116(d), will continue to do so. bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

### **NINTH CLAIM FOR RELIEF**

#### **(Trademark Dilution under Section 43(c) of the Lanham Act)**

131. The preceding paragraphs are incorporated by this reference.

132. The "bebe" mark has become famous, as that term is used in Section 43(c) of the Lanham Act, 35 U.S.C. § 1125(c), due to: (a) the inherent and acquired distinctiveness of the "bebe" mark; (b) the duration and extent of use of the "bebe" mark in connection with bebe's distinctive goods; (c) bebe's duration and extent of advertising featuring its mark; (d) the geographic area in which bebe has sold and advertised goods featuring its mark; (e) the nature of the trade channels bebe uses to market goods featuring its mark compared to the trade channels through which forever 21 sells and intends to sell its goods; (f) the degree of wide-spread public recognition of the "bebe" mark in the trade channel used by bebe and forever 21; and (g) the federal registrations of bebe's trademarks and service marks.

133. After the "bebe" mark had become famous, forever 21 willfully intended to trade on bebe's reputation and to cause dilution of bebe's famous mark. Furthermore, forever 21's use of the "bebe" mark deprives bebe of its exclusive capacity to identify and distinguish bebe from other sources of clothing and accessories. Such acts are likely to cause dilution of the distinctive qualify of bebe's famous mark in violation of Section 43(c) of the Lanham Act.

1 134. forever 21 is presently engaged in trademark dilution under 15 U.S.C. §  
2 1125(c), and unless immediately restrained and enjoined under 15 U.S.C. § 1116, will  
3 continue to do so. bebe's remedy at law is not by itself adequate to compensate them for  
4 the harm inflicted and threatened by forever 21.

5 **TENTH CLAIM FOR RELIEF**

6 **(Trademark Infringement and Unfair Competition under California Common Law)**

7 135. The preceding paragraphs are incorporated by this reference.

8 136. bebe has used its distinctive "bebe" mark in connection with clothing and  
9 personal accessories for a significant period of time, and in view of such use, the "bebe"  
10 mark has become uniquely associated with bebe and identifies bebe as the source of those  
11 goods.

12 137. forever 21's unauthorized use in commerce of the "bebe" mark has caused  
13 or is likely to cause confusion or mistake or to deceive customers, the general public, and  
14 the retail trade as to: (a) the affiliation, connection, or association of forever 21 with bebe,  
15 (b) the origin, sponsorship, or approval of forever 21's goods by bebe, and (c) source of  
16 forever 21's goods, all in violation of California common law and to the great damage of  
17 bebe and the public.

18 138. forever 21's willful conduct of selling products labeled with the "bebe"  
19 mark has and continues to deceived consumers, and forever 21 has received and  
20 continues to receive profits from such deception. Such conduct constitutes trademark  
21 infringement and unfair competition under California common law.

22 139. forever 21's trademark infringement and unfair competition has been and  
23 continues to be willful and knowing or with reason to know.

24 140. forever 21 is presently engaged in trademark infringement and unfair  
25 competition under California common law, and unless immediately restrained and  
26 enjoined, will continue to do so. bebe's remedy at law is not by itself adequate to  
27 compensate them for the harm inflicted and threatened by forever 21.  
28

**ELEVENTH CLAIM FOR RELIEF****(Trademark Dilution Under Calif. Bus. & Prof. Code § 14330)**

141. The preceding paragraphs are incorporated by this reference.

142. The “bebe” mark constitutes a valid trademark under California common law.

143. forever 21 willfully intended to trade on bebe’s reputation and to cause dilution of bebe’s famous mark. Furthermore, forever 21’s use of the “bebe” mark deprives bebe of its exclusive capacity to identify and distinguish bebe from other sources of clothing and accessories. Such acts are likely to cause dilution of the distinctive qualify of bebe’s famous mark in violation of Calif. Bus. & Prof. Code § 14330.

144. forever 21 is presently engaged in trademark dilution under Calif. Bus. & Prof. Code § 14330, and unless immediately restrained and enjoined, will continue to do so. bebe’s remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

**TWELFTH CLAIM FOR RELIEF****(Breach of Contract)**

145. The preceding paragraphs are incorporated by this reference.

146. forever 21’s use of the “bebe” mark breaches the settlement agreement identified in paragraphs 57 and 59 above.

147. forever 21’s use of the “bebe” mark violates the court order identified in paragraphs 58 and 59 above.

148. forever 21’s breach and violation are knowing and willful and injure bebe, the “bebe” mark, the goodwill associated with bebe and the “bebe” mark, and bebe’s reputation for high-quality products.

149. forever 21 is presently breaching the settlement agreement and violating the court order, and unless immediately restrained and enjoined, will continue to do so.



1 bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted  
2 and threatened by forever 21.

3 **THIRTEENTH CLAIM FOR RELIEF**

4 **(Civil Conspiracy)**

5 150. The preceding paragraphs are incorporated by this reference.

6 151. Defendants, and each of them, have agreed with each other and with non-  
7 parties to a common plan or design to commit the wrongful conduct described in this  
8 amended complaint.

9 152. Defendants, and each of them, have actual knowledge of the wrongful  
10 conduct as planned and had a concurrent knowledge of its unlawful purpose.

11 153. Defendants, and each of them, have engaged in wrongful conduct in  
12 furtherance of this conspiracy.

13 154. bebe has been damaged under California common law in an amount to be  
14 proven at trial because of Defendants' conspiracy and wrongful conduct.

15 155. Defendants are presently engaged in civil conspiracy, and unless  
16 immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not  
17 by itself adequate to compensate them for the harm inflicted and threatened by  
18 Defendants.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, bebe prays for relief as follows:

21 A. For a judgment that forever 21 has infringed United States Copyright  
22 Registration Nos. VA 1-385-194, VA 1-385-195, VA 1-385-192, VA 1-385-197, VA 1-  
23 363-651, VA 1-363-650, VA 1-385-196, and VA 1-385-193 identified in paragraphs 13-  
24 20, pursuant to 17 U.S.C. § 501;

25 B. For entry of a preliminary and permanent injunction enjoining and  
26 restraining forever 21, its officers, directors, agents, servants, employees and all other  
27 persons in privity or acting in concert with them from further infringement of Copyright  
28

1 Registration Nos. VA 1-385-194, VA 1-385-195, VA 1-385-192, VA 1-385-197, VA 1-  
 2 363-651, VA 1-363-650, VA 1-385-196, and VA 1-385-193 identified in paragraphs 13-  
 3 20, or any other copyrighted material owned by bebe, pursuant to 17 U.S.C. § 502;

4 C. For entry of relief immediately impounding all infringing articles, and  
 5 destruction thereof, pursuant to 17 U.S.C. § 503;

6 D. For an award to bebe of its actual damages and additional profits of the  
 7 infringers pursuant to 17 U.S.C. § 504;

8 E. For a finding that the infringement by forever 21 was willful, and for an  
 9 additional award to bebe for forever 21's willful infringement, pursuant to 17 U.S.C. § 504;

10 F. For an award of bebe's attorneys' fees, expenses and costs, including but not  
 11 limited to expert witnesses' fees, to bebe pursuant to 17 U.S.C. § 505;

12 G. For entry of a preliminary and permanent injunction enjoining and  
 13 restraining forever 21, its officers, directors, agents, servants, employees and all other  
 14 persons in privy or acting in concert with them from further engaging in unlawful, unfair,  
 15 and fraudulent business acts and practices, pursuant to Cal. Bus. & Prof. Code Section  
 16 17203;

17 H. For an award of restitution to bebe pursuant to Cal. Bus. & Prof. Code  
 18 Section 17203;

19 I. For an award of bebe's attorneys' fees, expenses and costs, including but not  
 20 limited to expert witnesses' fees, to bebe pursuant to Cal. Code Civ. Pro. Section 1021.5;

21 J. For entry of a preliminary and permanent injunction enjoining and  
 22 restraining forever 21, its officers, directors, agents, servants, employees and all other  
 23 persons in privy or acting in concert with them from further engaging in tortious  
 24 interference with prospective economic advantage, pursuant to California common law;

25 K. For an award of compensatory damages to bebe for forever 21's tortious  
 26 interference with prospective economic advantage, pursuant to California common law;  
 27  
 28

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 (602) 364-7000

1 L. For an award of punitive damages to bebe for forever 21's aggravated,  
2 malicious, fraudulent, willful, and/or wanton tortious interference with prospective  
3 economic advantage, pursuant to California common law;

4 M. For an award of exemplary and punitive damages to bebe for forever 21's  
5 misappropriation of bebe's designs, bebe's pool of qualified manufacturers, and the "bebe"  
6 trademark and associated goodwill, pursuant to California common law;

7 N. For entry of a preliminary and permanent injunction enjoining and  
8 restraining forever 21, its officers, directors, agents, servants, employees and all other  
9 persons in privy or acting in concert with them from further engaging in misappropriation  
10 of bebe's designs, bebe's pool of qualified manufacturers, and the "bebe" trademark and  
11 associated goodwill, pursuant to California common law;

12 O. For an award of damages to bebe for forever 21's violation of Section 43(a)  
13 of the Lanham Act with respect to bebe's designs, pursuant to California common law;

14 P. For entry of a preliminary and permanent injunction enjoining and  
15 restraining forever 21, its officers, directors, agents, servants, employees and all other  
16 persons in privy or acting in concert with them from further violating Section 43(a) of the  
17 Lanham Act with respect to bebe's designs, pursuant to California common law;

18 Q. For an award of damages to bebe for forever 21's reverse palming-off of  
19 bebe's designs, pursuant to California common law;

20 R. For entry of a preliminary and permanent injunction enjoining and  
21 restraining forever 21, its officers, directors, agents, servants, employees and all other  
22 persons in privy or acting in concert with them from further reverse palming-off of bebe's  
23 designs, pursuant to California common law;

24 S. For an award of exemplary and punitive damages to bebe for forever 21's  
25 civil conspiracy to commit the wrongful conduct described in this amended complaint,  
26 pursuant to California common law;



1 T. For entry of a preliminary and permanent injunction enjoining and  
2 restraining forever 21, its officers, directors, agents, servants, employees and all other  
3 persons in privy or acting in concert with them from further conspiracy to commit the  
4 wrongful conduct described in this amended complaint, pursuant to California common  
5 law;

6 U. For entry of a preliminary and permanent injunction enjoining and  
7 restraining forever 21, its officers, directors, agents, servants, employees and all other  
8 persons in privy or acting in concert with them from further infringement and dilution of  
9 the trademarks identified in paragraphs 39-52 above and from committing further  
10 violations of Section 43(a) of the Lanham Act, pursuant to 15 U.S.C. § 1116;

11 V. For an award to bebe of forever 21's profits unlawfully obtained by way of  
12 its infringing and diluting trademark uses and its violations of Section 43(a) of the Lanham  
13 Act, pursuant to 15 U.S.C. § 1117;

14 W. For an award to bebe of treble damages, statutory damages, prejudgment  
15 interest, and reasonable attorneys' fees against forever 21 for its trademark infringement  
16 and dilution and its violations of Section 43(a) of the Lanham Act, pursuant to 15 U.S.C. §  
17 1117;

18 X. For entry of an order to destroy all of forever 21's products and other  
19 unlawful uses of the "bebe" mark in the possession, custody, or control of forever 21 or its  
20 officers, directors, agents, servants, employees and all other persons in privy or acting in  
21 concert with them, pursuant to 15 U.S.C. § 1118;

22 Y. For entry of a preliminary and permanent injunction enjoining and  
23 restraining forever 21, its officers, directors, agents, servants, employees and all other  
24 persons in privy or acting in concert with them from further trademark infringement and  
25 unfair competition, pursuant to California common law;

26 Z. For entry of a preliminary and permanent injunction enjoining and  
27 restraining forever 21, its officers, directors, agents, servants, employees and all other  
28

persons in privity or acting in concert with them from further trademark dilution, pursuant to Calif. Bus. & Prof. Code § 14330;

AA. For an award of damages to bebe for forever 21's breach of a settlement agreement between bebe stores, inc. and the predecessors-in-interest to forever 21 in bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

BB. For an award of bebe's attorneys' fees, expenses and costs, including but not limited to expert witnesses' fees, to bebe for forever 21's breach of the settlement agreement in bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

CC. For an award of damages to bebe for forever 21's violation of the Final Consent Judgment and Permanent Injunction entered by this Court on February 8, 2002 in bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

DD. For an award of bebe's attorneys' fees, expenses and costs, including but not limited to expert witnesses' fees, to bebe for forever 21's violation of the Final Consent Judgment and Permanent Injunction entered by this Court on February 8, 2002 in bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ); and

EE. For an award to bebe of such other and further relief as this Court deems just and proper.

DATED this 7th day of June, 2007.

BRYAN CAVE LLP

By 

Sean K. McElenney

George C. Chen

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**DEMAND FOR JURY TRIAL**

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiffs bebe stores, inc. and bebe studio, inc. demand a trial by jury on all issues triable by a jury.

DATED this 7th day of June, 2007.

BRYAN CAVE LLP

By

  
Sean K. McElenney

George C. Chen

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